



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,802	03/23/2004	Larry P. Sower	14789.17	2905

22913 7590 07/18/2006

WORKMAN NYDEGGER  
(F/K/A WORKMAN NYDEGGER & SEELEY)  
60 EAST SOUTH TEMPLE  
1000 EAGLE GATE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER

BATSON, VICTOR D

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,802	<b>Applicant(s)</b> SOWER, LARRY P.	
	<b>Examiner</b> Victor Batson	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "gently" and "substantial" in claims 1,13,21,22 are relative terms, which render the claims indefinite. The terms "gently" and "substantial" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,3,7-12,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenback et al. (6,306,309) in view of Petering (5,545,326).

Ekenback et al. discloses a sludge harvester including a frame, one or more wheels 2, a pump 7 and a means for breaking up at least a portion of a sludge layer 8 & 9. Ekenback et al. however lacks specifying the flow rate of the pump. Concerning claim 3, chassis members 1 (fig. 2) are considered the sideboards. Concerning claim

12, it would have been obvious to use a tow rope or the like to pull the device through the sludge pond if it became stuck.

Petering teaches that it is known for pumps used to pump sludge, to have a flow rate of 100 gpm (col 5). This flow rate allows for controlled movement of the sludge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Ekenback et al., by using a pump having a flow rate of approximately 100 gpm as taught by Petering, to allow for controlled movement of the sludge.

Claims 1,2,3,6-18,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mims (4,957,622) in view of Petering (5,545,326).

Mims discloses a sludge harvester including a frame, one or more wheels 84A, 84B, 84C, 84D, a pump and a rake means 160 for breaking up at least a portion of a sludge layer. Mims, however, lacks specifying the flow rate of the pump. Concerning claim 12, Mims discloses using a tow cable (columns 3-4).

Petering teaches that it is known for pumps used to pump sludge, to have a flow rate of 100 gpm (col 5). This flow rate allows for controlled movement of the sludge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mims, by using a pump having a flow rate of approximately 100 gpm as taught by Petering, to allow for controlled movement of the sludge. Concerning the method claims, the combination renders the claimed method steps obvious since such would be a logical manner of using the combination.

Claims 19 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mims (4,957,622) in view of Petering (5,545,326) as applied to claims 1,2,3,6-18,22 above, and further in view of El-Shall (5,262,064).

Mims discloses a device as described previously, but lacks specifying that the sludge is used as fertilizer. Mims discloses that the sludge is pumped out for disposal away from the pond.

El-Shall teaches that it is known in the art to use sludge as a fertilizer (column 8 line 13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the use of the device of Mims, by using the sludge product as a fertilizer applied onto agricultural land since El-Shall teaches that it is known to use sludge as a fertilizer.

#### ***Allowable Subject Matter***

Claims 4,5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 4/26/06 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to teach or suggest a sludge harvester comprising a means for gently breaking up at least a portion of a sludge layer and the adjacent aqueous dilute layer without causing substantial mixing of the sludge layer and the adjacent aqueous dilute layer. It is the examiner's position that the terms

"gently" and "substantial" are relative terms not defined in the claims or specification, and therefore considered to be indefinite. The examiner suggests amending the claims with the structure that provides the desired results, or prevents the undesired results.


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 29, 2006

  
Victor Batson  
Primary Examiner  
Art Unit 3671